

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEITH ARMSTRONG and
CONNIE ARMSTRONG,

NOTICE OF REMOVAL

Plaintiffs,

Civil Action #:

v.

LOWES HOME CENTERS, LLC f/k/a
LOWE'S HOME CENTERS, INC.,
LOWE'S COMPANIES, INC.,
LOWE'S OF HAMBURG NEW YORK 2074 and
LOWE'S HOME IMPROVEMENT,

Defendants.

**TO: United States District Court
Western District of New York**

Pursuant to 28 U.S.C. §1441 and 1332, the action entitled *Keith Armstrong, et al. v. Lowe's Companies, Inc., et al.* commenced in the Supreme Court of the State of New York for the County of Erie, Index Number 80510/2020, is hereby removed by Defendant, Lowe's Home Centers, LLC (incorrectly sued herein as "Lowe's Home Centers, LLC f/k/a Lowe's Home Centers, Inc., Lowe's Companies, Inc., Lowe's of Hamburg New York 2704, and Lowe's Home Improvement") (hereinafter "Lowe's" or "Defendant"), from the Supreme Court of the State of New York, County of Erie to the United States District Court for the Western District of New York by the filing of this Notice of Removal with the Clerk of the United States District Court for the Western District of New York.

Defendant, by and through its attorneys, Goldberg Segalla LLP, respectfully states the following as grounds for removing this action:

Procedural History

1. On or about May 28, 2020, the above-captioned civil action was commenced in the Supreme Court of the State of New York, County of Erie. Plaintiffs' Summons and

Complaint were assigned Index Number 805010/2020 (hereinafter, the “State Court Action”).

2. According to the Affidavits of Service filed on June 19, 2020, Lowe’s of Hamburg New York 2074 and Lowe’s Home Improvement were served through personal service on June 18, 2020 and through the United States Postal Service on June 19, 2020. Lowe’s of Hamburg New York 2074 and Lowe’s Home Improvement are not legal entities.

3. According to the Affidavit of Service filed on June 29, 2020, Lowe’s Home Centers, LLC was served through the New York Secretary of State on June 23, 2020.

4. According to the Affidavits of Service filed on July 24, 2020, Lowe’s Companies, Inc. was served through personal service on July 20, 2020.

5. An Index of all documents filed in State Court is attached as **Exhibit A** pursuant to Local Rule 81(a)(3)(A). A copy of all pleadings and proceedings to date is attached as **Exhibit B**.

Parties

6. Upon information and belief, plaintiffs are residents of Erie County, State of New York.

7. Defendant is incorporated under the laws of the state of North Carolina and has a principal place of business in North Carolina.

8. More specifically, Lowe’s Home Centers, LLC, is a limited liability company organized under the laws of North Carolina and with a principal place of business at 1000 Lowe’s Boulevard, Mooresville, North Carolina 28117.

9. The sole member of Lowe’s Home Centers, LLC is Lowe’s Companies, Inc., a Lowe’s entity plaintiff improperly named in the Complaint.

10. Lowe’s Companies, Inc. was incorporated under the laws of North Carolina and has a principal place of business at 1000 Lowe’s Boulevard, Mooresville, North Carolina 28117.

11. Lowe’s of Hamburg New York 2074 and Lowe’s Home Improvement are not

legal entities, and are thus not viable parties to the action.

12. Accordingly, full diversity exists between the parties.

Jurisdiction

13. This Court has subject-matter jurisdiction of the action pursuant to 28 U.S.C. § 1332 in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

Basis for Removal

14. This Court has subject-matter jurisdiction on the basis of diversity of citizenship under 28 U.S.C. § 1332. Venue is proper pursuant to 28 U.S.C. § 1441(a) as this is the federal district court for the district embracing the place where the state court suit is pending.

15. Though the Complaint does not state the amount of damages that will be sought, on or about September 21, 2020, plaintiffs made a written demand of \$725,000 to resolve their claims against Lowe's. Therefore, it is Lowe's good faith belief that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. Plaintiffs' response to Lowe's Demand pursuant to CPLR §3017(c) dated September 21, 2020 is attached as **Exhibit C**.

16. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon plaintiffs, by and through their attorneys of record, and is being filed with the Clerk of the Court of the State of New York, Supreme Court, County of Erie.

17. Copies of all process, pleadings, and orders served upon Defendant in the State of New York Supreme Court, County of Erie, Index No. 805010/2020, are attached as Exhibit B.

18. By filing this Notice of Removal, Defendant does not waive any defenses which may be available to it, including, but not limited to, its right to contest *in personam* jurisdiction over Defendant and improper service of process.

19. No previous application has been made for the relief requested herein.

WHEREFORE, Defendant files this Notice of Removal so that the entire State Court Action bearing Index No. 805010/2020 now pending in the State of New York, Supreme Court, County of Erie be removed to this court for all further proceedings.

Dated: Buffalo, New York
October 6, 2020

GOLDBERG SEGALLA LLP

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